IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 17839 of 2007(W)

OP.380/2005 of D.C. & SESSIONS COURT,KOZHIKODE
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PETITIONERS:
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1. RAJESHWAARI K.P., W/O.RAMACHANDRAN,
NANDANAM, ERANHIPALAM P.O.,
CALICUT - 673 006.

2. RAMACHANDRAN,
S/O.P.H.PADMANABHAN, NANDANAM,
ERANHIPALAM P.O., CALICUT - 673 006.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT:

M/S.MAHARASHTRA APEX CORPORATION LTD,
REGD.OFFICE: SYNDICATE HOUSE,
MANIPAL (REP.BY ITS G.P.A.HOLDER,
K.GOPALAKRISHNA BHAT).

BY ADV. SRI.P.SHRIHARI
SMT.P.VANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Exts:

Ext.P1 true copy of the award passed by the Arbitrator dated 19.4.2005 in Arbitration Proceeding No.12/2002

Ext.P2 true copy of the petition Arbitration O.P. 380/2005 dated 23.6.2005 filed by the petitioners before the District Court, Kozhikode.

Ext.P3 true copy of the counter statement dated 17.1.2006 filed by the respondent in OP 380/2005.

Ext.P4 true copy of the order passed by the Principal District Judge, Kozhikode dated 13.2.2006 in OP 380/2005.

Ext.P5 true copy of the certificate issued by Dr.M.M.Govindan, National Hospital, Calicut dated 10.5.2007.

Respondent's Ext.

Ext.R1(a) true copy of the hire purchase agreement dated 5.6.1997 executed by the petitioners and respondent.

M.N.Krishnan, J.

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W.P(C).No.17839 of 2007

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Dated this the 9th day of October, 2007.

JUDGMENT

This Writ Petition is filed against Ext.P4 order passed by the District Judge, Kozhikode in Arbitration O.P. No.380 of 2005. The petition is filed under Section 34 of the Arbitration Act for settling aside the award passed by the Arbitrator. A preliminary objection was raised by the other side contending that the said court has no jurisdiction in view of the specific clauses embodied in the agreement between the parties. Ext.R1(a) is the agreement entered into between the parties and Clause 21 of the agreement reads as follows: "It is agreed that all the hire instalments are payable at Manipal and the Courts in Udupi alone and no other Courts whatsoever will have jurisdiction to try all suits in respect to any claim or disputes arising out of or under this agreement or in any way relating to the same." Clause 22 of the Arbitration Act deals with arbitration and arbitration is also done in accordance with the said term.

2. Now challenging the award passed under Clause 22 of the Act, the writ petitioner moved an application under Section 34 of the Act to set aside the same. The learned District Judge, Kozhikode relying on the decision of a Division Bench of this Court reported in **Abdul Haque** v. **I.C.D.S. Ltd.** - 2003(2) K.L.T. 166 held that as per the terms of the agreement involved in that case, the court in Dhakshina Kannada alone have the jurisdiction to try the case. A perusal of the facts of the case would reveal that it was an application filed against the sister concern of the present respondent and Clause relating to jurisdiction is almost the same like the one involved in this case. It was also an application for setting aside the award. This Court held that only the court at Dhakshina Kannada as per the terms of the agreement has got the jurisdiction to entertain an application under Section 34 of the Act.

3. Now the learned counsel for the petitioners contends before me that Clause 21 of the Act only relates to the suits and not arbitration and therefore when an arbitration award is filed the jurisdiction is there for the writ petitioners to file it at Kozhikode. He had also pointed out to me the decision of the

Apex Court reported in **Mayar** v. **Fortune Express** - 2006 (3) K.L.T. S.N. Case 52 at page 35 where the Apex Court was dealing with a situation that a plaint cannot be rejected on the basis of the allegations made by the defendant in the written statement and that mere opinion of a Judge that the plaintiff may not succeed cannot be a ground to reject the plaint. The court also held that a cause of action is a bundle of facts which required to be proved for obtaining relief.

4. I feel that the said dictum cannot have any application to the present case. Here, the parties have entered into an agreement and the agreement provides for the jurisdiction. It has been time and again held by the court that consent cannot confer jurisdiction. But if both courts are having jurisdiction the parties are always at liberty to chose the forum and such a jurisdictional conferment is legal and sustainable. A reading of Clause 21 would reveal that the instalment has to be paid at Manipal and the courts at Udupi alone shall have the jurisdiction. So, part of cause of action arises in a place and the jurisdictional aspect conferred by the agreement is legal and valid. The arbitration proceedings are also done at Udupi and therefore, I

feel that the proper jurisdiction for setting aside the award is only to the District Court, Udupi and not to the District Court, Kohzhikode. I am in total agreement with the finding of the learned District Judge and I am fortified by the decision of this Court referred to by me above which also was rendered in a very similar case and hold that the jurisdiction is with the court mentioned in the agreement therein.

5. I do not find any illegality or irregularity since the Writ Petition is dismissed and as the matter has been pending in this Court for all these time, I grant one month's time from today for the writ petitioner to file the application before the proper court.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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